

Landmark Chambers' seminar

Property Law Nuts & Bolts - Part 3: Possession Proceedings - where are we?

Thank you for joining. We will begin shortly.

Your speakers today...



Ellodie Gibbons (Chair)



Miriam Seitler

Topic:

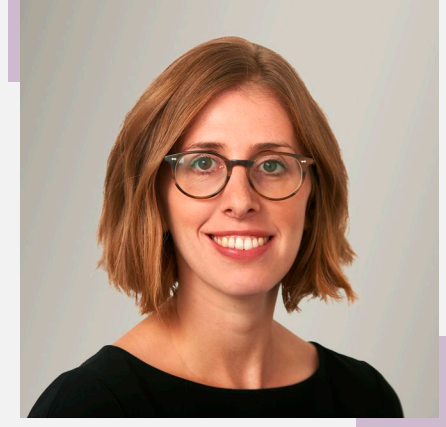
Renter's Reform – where are we now?



Harley Ronan

Topic:

Practical tips and tricks in Possession Claims



Rebecca Sage

Topic:

Possession Notices – a caselaw update



Possession Notices – a caselaw update



Rebecca Sage



What we will cover

- Principles governing “saving” errors in statutory notices
- Application of those principles in recent cases
- A few practical points



Section 8/21 notices – a brief reminder

- Both in prescribed form (section 21 – Form 6A, section 8 – Form 3; Schedule 1 to the Assured Tenancies and Agricultural Occupancies (Forms)(England) Regulations 2015, as amended)
- Or form “substantially to the same effect” (reg 2)
- Material dates specified in legislation – for example:
 - Section 8 – date before which proceedings may not be issued/after which proceedings must not be issued (s.8(3))
 - Section 21 – minimum 2 months’ notice (s.21(1)(b)/s.21(4))
- Court may dispense with service of s.8 notice where just and equitable to do so (s8(1)/(5)). No equivalent power for s.21.



Saving errors – the *Mannai* test



***Mannai* – a brief reminder**

- Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd [1997] AC 749
- Exercise of contractual break clause in commercial lease
- “Reasonable recipient” test
- But has been applied to statutory notices, including s.8



Recent re-statement of *Mannai*

- Pease v Carter [2020] EWCA Civ 175, Arnold LJ at [39]

(i) A statutory notice is to be interpreted in accordance with *Mannai v Eagle*, that is to say, as it would be understood by a reasonable recipient reading it in context.

ii) If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted.

iii) It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements.

iv) Even if a notice, properly interpreted, does not precisely comply with the statutory requirements, it may be possible to conclude that it is “substantially to the same effect” as a prescribed form if it nevertheless fulfils the statutory purpose. This is so even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language.



An “obvious typo”?

- Pease v Carter
- S.8 notice served on 7 November 2018, stated that proceedings would not begin until after 26 November 2017
- CA considered whether Mannai applied to s.8 notices – and found that it did
- Notice was valid:
 - S.8 did not require a date to be specified with particular contractual significance – simply requires 2 weeks’ notice of proceedings
 - Reasonable recipient would have understood the date as 26 November 2018
 - Notices were “substantially the same effect” – requirement applies to wording and information inserted into prescribed form



The limits of *Mannai*

- There can be no doubt about the intention of the notice. Underhill LJ in *Pease v Carter* ([57]):
"[...] there must be no reasonable doubt as to what the notice was intended to say: that is the formula endorsed by Lord Steyn in Mannai, at page 768G."
- There is a difference between formalities and requirements to impart information. Lord Hoffman in *Mannai* (p.776A):
"If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease."



Application to notice to quit

- O G Thomas Amaethyddiath v Turner & Ors [2022] EWCA Civ 1446
- Notice to quit addressed to former tenant at his home address – but tenancy had been assigned to company a few days prior (no requirement to notify)
- Mannai saved the notice at first instance and on appeal to High Court
- Reluctant disagreement from CA
 - Lewison LJ at [17]: *"It is, I think, clear from **Mannai** that if a notice fails to satisfy the substantive conditions upon which its validity turns, the question of how it is to be interpreted does not arise"*.
 - Notice was not "given" to the current tenant: *"If a notice is addressed to A (by his correct name) and sent to A's proper address, it cannot be treated as a notice given to B"* (at [45])
- Notice must correctly identify the tenant (addressing to "the tenant" would suffice)



Form 3 – Signature block

7. Name and address of landlord, licensor or landlord's agent:
(To be completed in full by the landlord, licensor, or, in the case of joint landlords / licensors, at least one of the joint landlords / licensors, or by someone authorised to give notice on the landlord's / licensor's behalf.)

Signed

Name

Address

Telephone number

Signed

Name

Address

Telephone number

Capacity (please tick): landlord / licensor
joint landlord(s) / licensor(s)
landlord's / licensor's agent

Date

6 Name and address of landlord/licensor*.

To be signed and dated by the landlord or licensor or the landlord's or licensor's agent (someone acting for the landlord or licensor). If there are joint landlords each landlord or the agent must sign unless one signs on behalf of the rest with their agreement.

Signed Date

Please specify whether: landlord / licensor / joint landlords / landlord's agent

Name(s) (Block Capitals)

Address

Telephone: Daytime Evening



Notice signed on behalf of landlord

- Northwood (Solihull) Ltd v Cooke [2022] EWCA Civ 40
- Corporate landlord, s.8 notice given by property manager employed by landlord
- T argued that signature had to comply with s.44 Companies Act 2006
- CA held the notice was valid:
 - No requirement in s.8 for signature
 - Prescribed form explicitly allows for signature by agent
 - Question of agency and authority
- Notice can be signed on behalf of a corporate landlord without complying with s.44 Companies Act 2006



My notice is potentially invalid, what now?

- Serve further notice without prejudice to validity of the first
- Proceed to hearing?
- Discontinue?



Renter's Reform – where are we now?



Miriam Seitler



Timescales



What changes does the bill propose?



**What amendments have been made to
the bill since its first reading?**



**What impact will the bill have on
housing law and practice?**



What can landlords do in the meantime to prepare?



Practical tips and tricks in Possession Claims



Harley Ronan



Practical tips

1. Pre-issue – notices, prescribed forms and dates
2. Preparing and issuing – pleadings, prescribed forms and getting it right
3. The first hearing – timescales, evidence, managing expectations
4. Making a possession order, costs, enforcement



Pre-issue: notices

- Prescribed by regulations – Form 6A for s. 21 notices and Form 3 for s. 8 notices.
- Pay particular attention to dates specified in the notice – s 8 notices vary depending on grounds relied upon – see s. 8(3A) onwards.
- S. 21 notices: if in doubt about prior service of prescribed information etc, serve again prior to service of s. 21 notice.
- Giving and receiving: notice may be served by one joint landlord, but name all tenants and serve separately on each tenant.
- Get these matters right before issue of the claim. Some errors can be saved – but not all: Pease v Carter [2020] 1 W.L.R. 1459.
- Be in a position to prove service at the hearing.



Pleadings

- Use the prescribed forms – claim form N5, rented residential premises in form N119. If the forms don't offer sufficient space, consider preparing a Supplemental Particulars of Claim
- General rules in CPR 16.2 and 16.4 apply
- PD 55A concerns content of pleadings, but compliance with PD 55A often lacking. In particular, PDA 55.4, para 2.2 – rules as to form and content of statement of arrears interest.
 - PDA 55.4: “2.4B If the possession claim relies on a statutory ground or grounds for possession, the particulars of claim must specify the ground or grounds relied on.” – don't just refer to attached s. 8 notice!
- Non-compliance not necessarily fatal – r. 3.10 – but may lead to an adjournment to allow amendment



55APD.3 **2.2** Paragraphs 2.3. to 2.4B apply if the claim relates to residential property let on a tenancy.

2.3 If the claim includes a claim for non-payment of rent the particulars of claim must set out:

- (1) the amount due at the start of the proceedings;
- (2) in schedule form, the dates and amounts of all payments due and payments made under the tenancy agreement for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue from the first date of default and a running total of the arrears;
- (3) the daily rate of any rent and interest;
- (4) any previous steps taken to recover the arrears of rent with full details of any court proceedings; and
- (5) any relevant information about the defendant's circumstances, in particular:
 - (a) whether the defendant is in receipt of social security benefits; and
 - (b) whether any payments are made on his behalf directly to the claimant under the Social Security Contributions and Benefits Act 1992.

2.3A If the claimant wishes to rely on a history of arrears which is longer than two years, he should state this in his particulars and exhibit a full (or longer) schedule to a witness statement.

2.4 If the claimant knows of any person (including a mortgagee) entitled to claim relief against forfeiture as underlessee under section 146(4) of the Law of Property Act 1925 (or in accordance with section 38 of the Senior Courts Act 1981, or section 138(9C) of the County Courts Act 1984):

- (1) the particulars of claim must state the name and address of that person; and
- (2) the claimant must file a copy of the particulars of claim for service on him.

2.4A If the claim for possession relates to the conduct of the tenant, the particulars of claim must state details of the conduct alleged.

2.4B If the possession claim relies on a statutory ground or grounds for possession, the particulars of claim must specify the ground or grounds relied on.



The first hearing– Part 55

Managing expectations - timeline

- The court will fix a date for the hearing when it issues the claim form: r. 55.5(1).
- Other than trespasser claims, the hearing date will be not less than 28 days from the date of issue of the claim form (r. 55.5(3)(a))
- The standard period between the issue of the claim form and the hearing will be not more than 8 weeks (r. 55.(3)(b)).
- A defendant who fails to file a defence on time “...may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs” – 55.7(3).
- First available date after an adjournment of first hearing varies hugely from court to court



The first hearing– Part 55

Managing expectations – the purpose of the first hearing

- The first hearing is a summary procedure at which the court may decide the claim or give directions: r. 55.8(1).

55.8(2): “Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated”.

- The same test as summary judgment: *Global 100 Ltd v Laleva* [2021] EWCA Civ 1835
- In practice, a defendant who attends a hearing and discloses an arguable defence for the first time is very likely to be granted an adjournment.
- If obvious that an adjournment will be granted, consider vacating first hearing and listing for a directions hearing.



The first hearing - evidence

- In cases other than those against trespassers, all witness statements must be filed and served at least 2 (clear) days before the hearing: r. 55.8(4). That timeframe does not include weekends, bank holidays etc: r. 2.8(4).
- What should the statement cover?
 - a. Proof of service of all relevant notices and other documents (*How to Rent* booklet etc)
 - b. Rent arrears/conduct relied upon
- Ground 8 requires proof of arrears at the date of the hearing. R. 55.8(4) “does not prevent such evidence being brought up to date orally or in writing on the day of the hearing if necessary”.
- Consider how you will prove arrears at the date of the hearing (in writing, witness attending etc.)



Possession orders

- Ask the court to specify the ground on which the order was made
- Time for possession – generally, time for possession will be 14 days from the date of the order “unless it appears to the court that exceptional hardship would be caused by requiring possession to be given up by that date” – s. 89(1), Housing Act 1980.
- But time can't be postponed for more than 6 weeks – s. 89(1), Housing Act 1980.
- Enforcement – if seeking enforcement in the High Court, at the very least put this in the pleadings, and address the criteria in CPR 30.3 (see also *Birmingham City Council v Mondhlani* [2015] EW Misc B41 (CC)).
- Attitude among DDJ/DJs to granting these applications varies.



Costs

- Consider whether fixed costs in Part 45 apply.
- Applicability governed by r. 45.16(2)(c)-(e). If the case falls into one of those categories, Part 45 applies "unless the court orders otherwise", and CPR the court has a jurisdiction to award beyond fixed costs in "exceptional circumstances": r.45.13(1).
- If the tenancy has a provision entitling the landlord to costs, plead it. The Court should generally give effect to such provisions: *Chaplain v Kumari* [2015] EWCA Civ 798
- If claiming an amount other than fixed costs, file and serve a statement of costs in form N260.



Preparing for the hearing - checklist

Key documents for a bundle/counsel:





- The pleadings
- The tenancy agreement
- Relevant notices and proof of service – consider certificates of service (Form N215)
- If relying on an arrears ground, statement of arrears and interest and any updated versions, together with evidence of position as at the date of the hearing
- Any witness evidence
- Statement of costs



Thank you

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